



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 4

COPY MAILED

JUL 27 2001

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Goodman, et al.
Application No. 09/769,902
Filed: January 25, 2001
Attorney Docket No. 61545/JPW/RA

:
:
: DECISION ON PETITION
:
:

This is a decision on the petition filed May 10, 2001 (certificate of mailing on May 7, 2001), requesting that the above-identified application be accorded a filing date of January 25, 2001.

Application papers in the above-identified application were filed on January 25, 2001. However, on March 7, 2001, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," stating that the application had not been accorded a filing date because the application was deposited without drawings.

In response, applicant timely filed the instant petition, asserting that drawings were submitted with the original filing on January 25, 2001. In support, applicant stated that he included a postcard receipt referencing that a transmittal letter was submitted. The transmittal letter, in turn, indicates that two sheets of informal drawings were submitted.

A review of the application file does not turn up a postcard receipt. Regardless, even if applicant had submitted this postcard receipt as described in the instant petition, it would not be sufficient to establish that drawings were included with the original filing. Only a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of the items. See MPEP 503. Therefore, a postcard receipt which references a transmittal letter only serves as evidence of receipt in the Office of the transmittal letter, and not of items which are listed on the transmittal letter.

The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office. 35 U.S.C. 111(a)(4). However, it is the practice of the Office to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113. MPEP 601.01(f). Petitioner is advised that in a situation in which the appropriate examining group later determines that drawings are necessary under 35 U.S.C. 113 the filing date issue will be reconsidered by the PTO.

A review of the original application papers filed January 25, 2001, reveals that they contained at least one method claim. Thus, the application, containing a specification and at least one claim, was complete within the meaning of 37 C.F.R. 1.53(b), and entitled to a filing date of January 25, 2001.

Accordingly, the petition is granted to the extent that the application will be accorded the January 25, 2001 filing date with no drawings as a part of the original disclosure of the application.

In regards to withdrawing the Notice, MPEP 601.01(f) also states that:

A nonprovisional application having at least one claim, ... directed to subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawings figure(s) in the specification, but filed without drawings will be treated as an application without all of the drawing figures referred to in the specification as discussed in MPEP §601.01(g), so long as the application contains something that can be construed as a written description.

And, MPEP 601.01(g) further provides that:

If the application is filed without all of the drawing figure(s) referred to in the specification, ..., OIPE will mail a "Notice of Omitted Item(s)" indicating that the application papers so deposited have been accorded a filing date, but are lacking some of the figures of the drawings described in the specification.

It is noted that the specification filed on January 25, 2001, describes drawings containing Figures 1 and 2, but no drawings were filed on January 25, 2001. Accordingly, it is concluded that the "Notice of Incomplete Application" mailed March 7, 2001, was mailed in error and is hereby withdrawn.

An amendment canceling all references in the specification to the omitted drawing should be filed prior to the first Office action on the merits.

Given the basis for granting this petition, the petition fee is being refunded to Deposit Account No. 03-3125, as authorized.

This application is being forwarded to the Office of Initial Patent Examination for further processing, including mailing of a filing receipt, with a filing date of January 25, 2001 and for indication on the file wrapper label that "0" sheets of drawings were present on filing. Applicant will receive appropriate notifications regarding any missing items or fees owed, and other information in due course from OIPE.

Telephone inquiries specific to this decision may be directed to

Petitions Attorney Cliff Congo at (703) 305-0272.

A handwritten signature in cursive script, appearing to read "Beverly M. Flanagan".

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy